TOWN OF HARPSWELL
PLANNING BOARD MINUTES
July 15, 2009
APPROVED

MEMBERS PRESENT
Joanne Rogers, Chair
John Papacosma, Vice Chair
Robin Brooks, Secretary
Dorothy Carrier
Roberta Floccher
Debora Levensailor, Associate
Burr Taylor, Associate

MEMBERS ABSENT

STAFF PRESENT
Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record,* was called to order at 6:34 PM by Joanne Rogers, Chair. Introductions were made of Board members, and the Pledge of Allegiance was recited.

The Chair reviewed the Agenda and the meeting procedures.

CONSIDERATION OF MINUTES
The Chair asked for a motion to accept the Minutes of June 17, 2009 as printed. Ms. Carrier made the motion and it was seconded; the Minutes were accepted unanimously, as printed.

The Chair appointed Ms. Levensailor as a full voting member for the evening; Ms. Floccher was considered absent.

NEW BUSINESS

John Ciarfella, Jr. (Owner/Applicant), Subdivision Amendment, Tax Map 42 Lots 28 and 30, 13 Doughty Point Road, Harpswell.

Michelle Bryer introduced Mr. Ciarfella, and then addressed the Board. She stated that they had gone before the Board on June 17, 2009 to obtain preliminary approval for a subdivision amendment, which would be a "like exchange" land swap with their neighbor; the size of the lots involved would not change. This process was necessary in order for them to meet the setbacks so they could move their garage from a low point on their property to higher ground, adjacent to their house (she referred the Board members to the plans in their packet materials). Ms. Bryer said at the site visit on June 13, 2009 there had been a question regarding the impervious surface coverage. They had spoken to Brian Johnson regarding the matter, and also the Code Enforcement Officer who confirmed that they were under by 1600 sq. ft. It was their plan to move the garage to an "already graveled driveway," which was considered impervious surface; they would not be adding any more impervious surface to their property.

The Chair asked if there were questions from the Board; there were none. She then asked if there were comments from the audience.

Albert Chase, the neighbor involved in the land swap, addressed the Board. He explained that the issue had been discussed between them for several years, and the solution was agreeable. He referred the Board to their copy of the site plan which showed a fence that had been set by a previous owner, almost 15 ft. (in some places) inside their property line. He said that, even with the swap, there would still be room left between the fences. He said they were in favor of the land swap, as the land involved was land they were not using and would probably never use.

The Chair asked for further comments; there were none.

The Chair then addressed the Findings of Fact in the Town Planner's memo, §9 "Approval Standards" of the Subdivision Ordinance. There was no discussion. She then made a motion to approve the waiver of Sec. 8.3.1.1 "Location Map" as suggested in the memo. The motion was seconded; all voted in favor.

The Chair also moved to approve the Doughty Point Road Subdivision Amendment with the standard conditions of approval; the motion was seconded. The Board voted to unanimously approve the subdivision amendment.

At that time, the Chair called for a five minute recess in the proceedings in order for the Board to sign the plans for the Applicants.

The meeting resumed at 6:42 PM.

Ms. Floccher entered the meeting at 6:50 PM.

Duane A. Webber (Owner/Applicant), Ridgeview Lane Subdivision Amendment, Tax Map 41 Lots 89 & 91, Ridgeview Lane, Harpswell.

William Coombs, a surveyor from Bailey Island and the representative for Mr. Webber, addressed the Board. He explained that the issue was a property exchange - 37,000 sq. ft., 10 acres, and it would go to the Catholic Church would be acquiring the parcel from the Webbers. He said that the Church wanted to acquire the land for their parking lot.

The Chair asked if there were any comments from the audience; there were none. She then asked if there were comments from the Board. Ms. Carrier referred to the site visit, and said that they noticed the area Mr. Webber was turning over to the Church had been "a place to dump fill." She wanted to know if it would continue to be used as a refuse area; Mr. Coombs did not know. He said Mr. Webber had filled in the area that would be going to the Church. It was the old gravel pit, and he was trying to fill it in. Mr. Coombs did not know if that would continue.

Mr. Papacosma asked Mr. Coombs if the entire area would be converted into a parking lot. Mr. Coombs responded that it was to allow them to have the 20% impervious lot coverage; it was area that would facilitate the paving of their parking area.

The Chair asked if there were any further questions for Mr. Coombs; there were none. She then asked if the Board had any questions regarding the suggested waivers from the Town Planner's memo; there were none.

The Chair moved to approve the waiver of §8.3.2.10 "Zoning District Lines" and §9.10 "Wetlands." The motion was seconded, and all voted in favor.

The Chair then moved to approve the Ridgeview Lane Subdivision Amendment with the standard conditions of approval; the motion was seconded. The Board voted unanimously to approve the subdivision amendment.

The Chair called a five minute recess at 6:47 PM so the Board could sign the plans.

County of Cumberland (Applicant), Town of Harpswell (Owner), Site Plan Review, Tax Map 42 Lot 70, Community Drive, Harpswell.

Al Palmer, of Gorrill-Palmer Consulting Engineers, Inc., addressed the Board on behalf of Cumberland County. He introduced Bruce Tarbox, Director of Operations for Cumberland County, and Paul Strout, President of Tower Specialists, Inc., the leaseholder for the site, and said that the Harpswell Town Administrator, Kristi Eiane, was also in attendance. He gave background on the property, and stated that the tower facility had been approved by the Planning Board the previous year. Mr. Palmer stated that Cumberland County had requested approval to put a microwave dish on the tower and at the base of the tower, within the fenced area, to construct an 8 ft. x 10 ft. structure to house their related equipment. The facility would connect to the underground electrical that was presently being installed. He referred to the approval of another entity for the tower site that had gone before the Board in February which had included utilities for the facility. He explained that the County's work would take place within the fenced area that was previously approved and would connect to the utilities via an underground system that was currently being constructed.

The Chair asked for someone to respond to the suggested waiver mentioned in the Town Planner's memo, §15.21 "Technical and Financial Capacity." Mr. Palmer responded that the County had voted on the project in November and had approved $1,900,000 for proposed construction and upgrades of various facilities; they would also construct facilities in Harrison and Casco. He explained that the County had voted on the funding; it was not "like going to the bank."

The Chair also requested an explanation of §7.2.2.10 of the Town Planner's memo; Kristi Eiane, Harpswell Town Administrator, addressed the Board. She explained that the waiver had been requested because the Town owned the property as a governmental entity, and in partnership with the County. She explained that the waiver was requested because they did not want the Board to ask the Town to put up a surety on its own property. She said the Town "would take steps for a removal when necessary," and it would be an additional burden to pay for a surety to have on file when the Town was the owner of the property.

Ms. Carrier said that the Town required telecommunications to have a plan in place, along with surety. Would the Town and Cumberland County have a plan in place to remove [the tower]? Ms. Eiane responded that a letter agreement with the County could be in place that would indicate that the "partnership" of the Town and the County ensure that the tower would be removed at the end of the site agreement. She said they could "put something in writing." Ms. Carrier said that it would be "fair and equitable," and that a plan should be in place; it would be unknown who would be "in charge" at that time. Ms. Eiane asked if a letter agreement would be acceptable; Ms. Carrier affirmed that it would be as long as it was on file.

The Chair asked if there were any further questions from the Board for the Applicant or the Town Administrator. Mr. Papacosma commented on the aggregate that would be used for the building, and asked about the color. Bruce Tarbox of Cumberland County addressed the Board, and stated that the material was "a brownish aggregate, similar to sand." He had not spoken to the other two approved vendors about their buildings on the tower site. Mr. Papacosma suggested he coordinate with the other vendors.

Paul Strout of Tower Specialists, Inc. addressed the Board and stated that the Cumberland County building was "identical to US Cellular's building," and was made by the same manufacturer. He said those buildings "typically look the same."

The Chair asked if there were any further questions or comments. Ms. Tukey asked a question regarding technical capacity – who were they going to chose to construct the building? Mr. Palmer referred to their submitted application, and to the architectural views provided. Mr. Tarbox explained the building would be

constructed by Sabre, a division of Cellerex. He said that Cumberland County "went out for the specifications and RFPs ("Requests for Proposal")" and reviewed many choices before settling on Cellerex. He stated that [the proposed building plan] had been reviewed by the County's engineers, and the company provided that type of structure. Mr. Tarbox said that the concern was ice loads, etc. and it was a strong concrete structure; for a small 8 ft. x 10 ft. building, it was "an overkill."

The Chair asked if there were any other questions. Ms. Carrier referred to the building drawings and addressed the light fixtures on the outside, which appeared to be spotlights. She said the Board would prefer that they were pointing downward so they weren't "as obvious," if possible. Mr. Tarbox said that the light fixture could be changed, and clarified that the purpose of the fixture was to illuminate the door and the pathway used to access the structure. He also said that it was "photo cell controlled" and would turn on each evening. Ms. Carrier explained that the preference was to illuminate as little of the surrounding area as possible; to not "interfere with Mother Nature." Mr. Tarbox said that the light would come on when there was movement in that area, and would "illuminate the area for that particular time."

The Chair asked if there were any other questions; there were none. She made the motion to approve the waiver from §15.21 "Technical and Financial Capacity," and also for §7.2.2.10, the request from the Town for a waiver. The motion was seconded; there were no further comments. The motion passed unanimously.

The Chair then moved to approve the application with the standard conditions of approval, as listed in the distributed materials. There were no further comments or questions, the Board voted unanimously to approve the application for site plan review.

OLD BUSINESS

Blasting Ordinance Review
The Town Planner addressed the Board, and referred them to the draft Blasting Ordinance in their packet materials, which had been amended since the last meeting. She said she had received feedback from people who happened to be in the audience regarding the size of houses and how many cubic yards would be removed when blasting for a house (300 cu. yds.). She said it had been requested by others at the Selectmen's meeting of July 9, 2009 that the ordinance was simplified further by including notification requirements and proof of licensure, and that was "about all."

Selectman Elinor Multer from Orr's Island, addressed the Board. She explained that the Board of Selectmen had concerns regarding how much would be involved, in particular, with the construction of a single family dwelling. She said her concern was mostly the 300 cu. yds. as a borderline figure; more than that, and the matter would fall under the auspices of the Planning Board. She did not want to see large numbers of single family houses having to go before the Planning Board. She said that the notification process had been agreed upon, as well as the issuing of a permit. There was a question as to what point you would have to go to the Code Enforcement Office or before the Planning Board in order to get a permit for a single family house; she thought 300 cu. yds. was a low figure. Selectman Multer also explained that when there are additional steps to the process, there is also additional cost. Additionally, it would work against the Town's attempts to have lower cost housing in the community.

Selectman Multer offered her assistance to the Planning Board for any future issues; she explained that she was their liaison.

Selectman Henderson addressed the Board. He expressed the opinion that, by initially keeping the ordinance simple could allow for future "sophistication." He also had a concern about why an applicant would have to go

before the Planning Board; he thought the issue would come under the auspices of the Code Enforcement Office.

The Chair asked for further comments from the audience. Ann Nemrow from Gunpoint, asked about the notification radius from the dynamite site. The Board informed her that it was 500 ft. She gave personal experience where she had lost "very good water" from a dynamite site that was "a quarter mile away." She wondered if 500 ft. was sufficient.

The Chair asked for other comments; Michelle Bryer addressed the Board, and said she had spoken to the Town Planner regarding their personal experience with blasting. She said when they blasted for the foundation for their house on Doughty Point, the blast site was four feet from their well, which was not affected. She explained that they had hired a reputable blasting company that went to each neighbor, notified them there would be blasting and asked to take photographs of their house inside and out, including video. These measures were taken for their insurance purposes as well as for the safety of the neighbors involved. She said they had blasted almost 500 cu. yds. of ledge; the only mishaps were that one rock hit the side of the house, and one rock fell on one of their pieces of equipment in the neighbor's yard. Ms. Bryer said she agreed with the Selectmen; when a permit for a foundation was requested from the Code Enforcement Office, part of it should be that you have to notify your neighbors, and the company you hire should notify your neighbors. She didn't think the Planning Board should be involved.

Mr. Papacosma agreed, and commented on the disparity between the two situations discussed by the audience members, and the ledge and substrata conditions in Harpswell. He stated he had discussed blasting with the contractor involved with the Telecommunications Tower site [on Community Drive] who said they had hired a licensed contractor (the "key point"). The contractor would have to get a permit from the Code Enforcement Office, which would ensure that the contractor was "reliable, with appropriate insurance, etc." and that notification would take place. In that way, if there was any damage done, there could be recourse. He agreed that the process should not have to go before the Planning Board.

The Chair said she agreed that it should be limited to the Code Enforcement Office. She gave personal experience, and stated that the blasting was more than 500 ft. away when she lost her well, and wanted the distance requirement to be increased.

Ms. Nemrow addressed the Board, and stated that, with regard to "water vitality and purity, notification was extremely important." It gave the abutters time to get a reading on the quality of water prior to the event. After the fact, there was no proof.

The Chair asked the Town Planner to address the ordinance with the Board again, and include language that would limit jurisdiction to the Code Enforcement Office and increased the distance requirement for notification. There was discussion among the Board members regarding the distance requirement; the Town Planner said that most blasting ordinances used a distance of 500 ft.

Ms. Carrier said it was difficult to decide the distance issue due to "what's underneath." She explained that important factors to consider included who the blaster was, if he was reputable, how much dynamite would be used, if they would use small charges or large charges, what material they would be blasting, etc. She reiterated that there were "no guarantees" that there would not be a "ripple effect underground."

The Chair said the ordinance should apply equally to someone four feet away, as well as someone 500 ft. away. Ms. Carrier said that, since there were no reported incidences to the Town to base their opinion on, it would be her suggestion to have the ordinance requirement 500 ft. initially; it might become evident in the

future that the distance requirement should be modified and made wider. She also stated that there "would be a cost;" there was discussion among the Board regarding potential costs incurred for notification.

Mr. Papacosma said that the responsibility of the "permitting entity" would be that there was "no harm." He referred to the two examples of the audience members previously heard. Ms. Carrier used the example of blasting on the Reach Road that had no effect on the surrounding, "highly populated" housing development. She said there was probably more "non effect" than "effect."

Ms. Multer addressed the Board, and recommended that the State geologists and State hydrologists be consulted; they had done extensive work several years ago regarding what was underground all over the State. She also suggested the Board ask them if there was a way to project the effect of a blast on [underground] water.

Michelle Bryer addressed the Board, and stated that most blasting companies were federally licensed. She said that they place seismograph meters out that measure the blast vibration across the ground, and gave the example of when she and her husband had their blasting done. She stated "you could lose a well in Harpswell very easily," and gave the example that they had lost their well because their neighbor drilled a well (they had drilled into a vein). She said there were no guarantees, and asked that the application process include documentation that the blaster is a federally licensed company; they would "monitor their blasting zones very carefully."

Richard Nemrow, Ann Nemrow's husband, addressed the Board and asked what use notification was to an abutter, since they could not do anything to stop the blasting; it was purely a notification, and what rights they would have. He reiterated that it was difficult in Harpswell to tell what a proper distance should be. He said the issue was "the quality of water that we drink," and steps should be taken to ensure that any "instances" don't happen. It could be very costly to the person affected by the blasting, as well.

Mr. Taylor restated that there were the two issues of 1) "the rocks" that were "different all over," and 2) a reputable blaster. There was discussion among the Board members; Mr. Taylor suggested the notification contain a date, and be distributed a certain period of time prior to blasting. Mr. Papacosma suggested that there should be "substantial evidence" prior to the blasting for the purpose of proving "your well went bad" after the blasting. He thought that the competence of the blaster was a key issue. Mr. Taylor asked what recourse there would be if an abutter's well was destroyed and they could prove that it was because of the blasting. There was further discussion regarding proof "beyond a reasonable doubt."

Ms. Floccher stated that "it wouldn't be beyond a reasonable doubt. There would be a level of duty and care that they owed in doing the blasting according to normal industry standards." She said that people might have a right of recovery if they could show that the standards were not adhered to. She said it would probably be "clear preponderance of the evidence if they failed to take the necessary steps to protect it." She was in favor of notification, and if the abutter did not want to test their well either before or after the blast, the Town had done "the best they could" to protect the people. Ms. Floccher also agreed that applications not go before the Planning Board, but rather the Code Enforcement Office. She asked if there was a "trigger point for the amount of blasting" in the extent of blasting to be done, that might expand the amount the Code Enforcement Officer was not comfortable with, i.e. number of charges, etc. She suggested the Board ask someone familiar with blasting. Although the Town couldn't "fix it for everybody," Ms. Floccher said she felt they owed "some reasonable measure" more than the 500' (or whatever) to make that assessment. She agreed with "taking it out of the process of belaboring all those steps."

Mr. Brooks wanted to know: 1) what the cost would be for increasing the area for the notification process, 2) what recourse would someone have if their well was damaged, and what kind of evidence would they need to

support their claim, and 3) should the Board have geologists involved in the discussion of framing the ordinance?

Ms. Floccher said the recourse would have to do with the insurance provisions that they carry, and then it would be a matter of the burden of proof, i.e. did they meet what was a reasonable duty of care for a normal industry standard in the blasting industry. If the blaster did not adhere to industry standards, and/or caused harm, the person could either get the insurance coverage or sue the blasting company.

Ms. Floccher clarified for the Board that she used to handle insurance claims for blasting companies; however, she said she did not know current industry standards. She said in a more crowded area, a reputable blasting company would take pictures of foundations so they weren't susceptible to fraudulent claims. A good company would take steps beforehand; it was not unusual to hear the steps that Ms. Bryer outlined. She stated that what the Board wanted to enforce through the process was to ensure adequate protections were in place.

The Chair asked the Town Planner if she had enough information to present another draft for the Board at another meeting, and Ms. Tukey responded that she did.

Ms. Carrier said she found the ordinance "cumbersome." She asked whether the 300 cu. yds. would be before the blast or after, and how the amount would be monitored. The Town Planner asked if the Board wanted the ordinance to address subdivisions of a certain size. Ms. Carrier said they should "take it away from single housing" and maybe the Planning Board could review blasting in subdivisions. There was discussion with the Town Planner regarding subdivisions; also, the size of the ordinance. Mr. Papacosma said there should be a concern about the applications of the explosions. There was further discussion regarding the amount of dynamite.

The Chair suggested the Board consider another draft, perhaps at their next meeting; a simplified version that would state that blasting was under the jurisdiction of the Code Enforcement Office, and that would also include language to address blasting in a subdivision. She reiterated that most of the concern was the issue of notification.

The Board suggested the process might be a "combination" of procedures: notification within a certain radius, together with a public notice, i.e. newspaper ad, and proof of licensing and liability insurance.

Ms. Levensailor said she supported the ordinance, and liked it the way it was; however, she would like to see what the simplified version would look like.

Shoreland Zoning Ordinance Amendment – Non-Conforming Structures

The Town Planner had written two versions of proposed language for the ordinance amendment which addressed two options: 1) language that discussed height limit, and 2) language that stated foundations should be included in the 30% calculation.

Ms. Carrier said she favored the second option. The Town Planner clarified that an applicant could not get a permit for anything higher than five feet; it would be beyond the 30% expansion rule, per the ordinance. There was discussion regarding the five foot limit, and the Board agreed that it accomplished what they wanted the ordinance to do.

The Chair asked for further comments; there were none. It was decided that the Board favored the second option presented, with a "trigger" included in the language that would state if an applicant wanted their basement to be higher than five feet, it would be included in the calculation for the 30% expansion.

OTHER BOARD BUSINESS
Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

There were no jurisdictional issues to discuss.

Town Planner's Updates
The Town Planner said that the Code Enforcement Officer would attend the next Planning Board meeting in order to discuss the ordinances in question and, possibly, one of the site plans that would be presented.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 7:50 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary